IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/08/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN
and
THE HON'BLE MR.JUSTICE S.K.KRISHNAN

Civil Miscellaneous Appeal No. 998 of 1995
and
Cross Objection No.105 of 1998

CMA.No:998 of 1995

Mallika ..Appellant

-Vs-

1.S.K.Rajendran

2.Oriental Insurance Co., Ltd.,
rep. by Divisional Manager (Branch)
Malik Mahal
Ist Floor,
Nagercoil 629 001

3.K.Nagarajan
(given up) ..Respondents

Cross Objn.No:105 of 1998

Oriental Insurance Co., Ltd.,
rep. by Divisional Manager (Branch)
Malik Mahal
Ist Floor,
Nagercoil 629 001 .. Appellant

Vs.

1.Mallika
2.S.K.Rajendran .. Respondents

Civil Miscellaneous Appeal and Cross Objection are filed against the award and decree dated 8.12.1994 made in MCOP No. 21 of 1991 of on the file of the District Court, (Motor Accidents Claims Tribunal), Nagercoil.

For appellant :: V.C.Selvasekaran

For Respondents :: Mr.M.B.Raghavan

:JUDGMENT

E.PADMANABHAN,J.,
CMA.NO.998 of 1995 has been preferred by the claimant in MCOP.No.21 of 1991 on the file of the District Court, (Motor Accident Claims Tribunal), Nagercoil. In MCOP.No.21 of 1991, the Tribunal below awarded a compensation of Rs.26,400/= with interest and cost of Rs.4403 in all. Not being satisfied with the quantum of compensation awarded by the tribunal below the claimant has preferred the present appeal, while the insurer has filed the Cross Objection No.105 of 1998 contending that the deceased was neither required to be covered by the provisions of the Motor Vehicles Act, nor covered under the policy of insurance as the deceased fall under the category of non fare paying passenger for whom a limited sum of Rs.10,000/= only has to be paid under policy.

2. The learned counsel appearing for the appellant contended that no amount has been awarded towards funeral expenses, though the claimants claimed Rs.5 lakhs only Rs.26,400/= alone has been awarded for the fatal accident. It is contended by the counsel for the appellant that the deceased aged 23 years was earning more than Rs.3000/= per month as seen from the exhibits and at any rate the award of compensation is too low.

3. The counsel for the cross objector heavily relied on the pronouncement of the Supreme Court reported in 2003 (2) SCC 223 and contended that the insurer is not liable for the non fair paying passenger on a goods vehicle.

4. According to the claimant on 31.8.1990 around 6.50 a.m., on Nagercoil-Trivandrum main road at Vellicode Nedumparai Kattuvilai, the lorry bearing registration No.TNK 5720 was driven rashly and negligently from east to west by its Driver. On the said lorry the deceased was one of the occupant accompanying the consignment of vegetables. The lorry which was driven rashly and negligently, capsized and the occupants of the lorry including the cleaner died.

5. The lorry owner as well as the Driver absented themselves in the Claim Petition. Only the insurer alone contested. In all three Claim Petitions were filed arising out of the same accident. The present appeallant is the Claimmant in MCOP.NO.21 of 1991. The tribunal below after considering the oral and documentary evidence held that the accident has been caused by the rash and negligent driving of the lorry and the claimants are entitled to maintain claim petitions.

6. The findings of the tribunal below with respect to negligence is not the subject matter of challenge in this appeal either by the insurer or by the owner of the vehicle.

7. The claimant in MCOP.No.21 of 1991 claimed Rs.5 lakhs. According to the claimant her son was contributing Rs.3000/= per month from the business

carried on by him at Trivandrum, that her deceased son was assessed to the Profession tax at Trivandrum, that her son a graduate, who continued the business carried on by his father and that she is entitled to a compensation of Rs.5 lakhs.

8. The tribunal below took the view that Sivaraj vegetable vendor and transported the same to Trivandrum and he earned his livelihood. The tribunal took the view that the deceased was earning Rs.400/= per month and that he would have contribut s.150/= to his mother. This is being challenged in this appeal. The tribunal below took the view that the deceased would have paid if at all Rs.14,400/= at the rate of RS.100 per month for 12 years to his mother and even that amount the deceased would not pay after his marriage. In that view of the matter, the tribunal awarded Rs.14,400/= as loss of income and in all aggregating to Rs.26,400/=.

9. The points that arise for consideration in this appeal are:
(i) What is the quantum of compensation the claimant is entitled to for the death of her son?
(ii) Who is liable to pay the compensation, either the insurer or the owner of the vehicle?

10. The deceased a graduate, was just 23 years on the date of accident and he was a bachelor. It is the evidence of the claimant that the deceased was carrying on the vegetable vending which his father carried during his life time at Trivandrum. The tribunal below proceeded as if the deceased would have earned only Rs.400/= per month and therefore he would have if at all continued Rs.150/= per month till date of his marriage and thereafter Rs.100/=. This is too low an estimation. For an able bodied business man carrying on vegetable business both retail and wholesale, it is too low a sum. The evidence of the claimant-mother would show that the deceased was earning not less than Rs.3000/= per month. There is no contra evidence. At any rate the deceased in a city like Trivandrum, unless he makes Rs.300 0 to Rs.4000/= per month he will not be in a position to run his establishment, namely shop, paying the rent and also electricity charges and other incidental expenses like profession tax.

11. On a consideration of the evidence spoken to by the claimant, this court holds that the conclusion of the tribunal cannot be sustained and hold that the claimant was earning not less than Rs.3500 /= per month and he would have definitely contributed monthly a sum of Rs.1000/= to his mother. In these hard days, without Rs.1000/= it is impossible for the claimant, the mother of the deceased to live. Even if the deceased had married, there may not be any appreciable difference. At any rate loss of income on the date of the death has to be assessed. This court on a consideration of evidence of P.W.1 holds that the loss of contribution by the deceased to the claimant will be not less than Rs.12000/= per annum. The deceased was just 23 years and the claimant was 44 years on the date of the accident. Even adopting applying 11 as multiplier the total loss of income would come to Rs.1,22,000/=. Any award less than this amount will not be fair and reasonable and it will be far below. The view of the tribunal below in this respect cannot be sustained. We hold the deceased was contributing Rs.1000/= every month to his mother/

claimant and applying multiplier of 11, taking into consideration of the age of the claimant, we hold that the claimant will be entitled to a compensation of Rs.1,22,000/=.

12. There is no challenge as to the negligence on the part of the driver and the findings with respect to negligence by the tribunal has to be confirmed. Apart from the loss of earning, towards conventional damages, funeral expenses, transportation expenses, this court awards Rs.8000/= and in all aggregating to Rs.1,30,000/=.

13. It is not in dispute that the deceased was accompanying the vegetables which has been loaded on the ill fated lorry and it is not as if he was an unauthorised passenger on the lorry, the deceased was accompanying the goods. As regards the question of liability, the Insurance Company contended that in respect of non fare paying passenger and not being employed by the owner of the commercial vehicle the maximum liability of the insurer, it is pointed out is Rs.10 ,000/= and therefore the insurance company is not liable to pay any amount in excess of Rs.10,000/= or in the alternative, the insurer is liable to pay under the heading "no fault liability" as provided by the statutory provision.

14. Attention of this court is drawn to the pronouncement in M.K. Kunhimohammed Vs. P.A.Ahmedkutty and others reported in 1987 ACJ 872, where the Supreme Court had occasion to consider the limit prescribed in Section 95(2)(b)(ii)(4) of the Motor Vehicles Act which prescribed the minimum liability. In that context, the Supreme Court held that the insurer is liable to pay up to Rs.10,000/= for each individual passenger where the vehicle involved was a motor car and up to Rs.5000/= for each individual passenger in any other case.

15. It is nextly contended that the deceased being a gratuitous passenger, the insurance company is not liable and reliance is placed upon the pronouncement of the Delhi High Court in Ramesh Kumar Vs. National Insurance Co Ltd., and others reported in 2001 ACJ 1565. While following the pronouncement in 2000 ACJ 1 (SC), the Division Bench of the Delhi High Court held thus;-

"7.This takes us to the third category of cases where similar question is raised regarding liability of the insurance company under the new Act after its 1994 amendment. The submission for the claimant is, the insurance company is liable to pay the compensation both in view of the decision of this corut in New India Assurance Co.,Ltd., Vs. Satpal Singh, 2000 ACJ 1 (SC) and also in view of its 1994 amendment. This court in this case, while interpreting section 147 (1)(b)(i) and (ii) of the new Act holds the insurance company liable to pay the compensation both for the owner and his representative and also for the gratuitous passengers travelling in a goods vehicle. In this third category, in spite of the said declaration the claimants have confined their claim only for the owner or his representative who was travelling a goods vehicle and o or the gratuitous passenger. Since Satpal Singh (supra) confers right over gratuitous passengers also, which is not claimed by any of the claimants under this category, thus declaration of law in Satpal Singh

(supra) is not required to be considered for this category, as claim for the owner and his representative is not disputed even by the learned counsel for the insurance company, after its aforesaid 1994 amendment, that insurance company is liable to pay compensation for such person even when they were travelling in a goods vehicle. This is in view of 1994 amendment in subclause (i) of Section 147 (1)(b) of the new Act in which the following words were brought in:
"Injury to any person, including owner of the goods or his authorised representative carried in a vehicle."
8. Thus this category of cases are also disposed of by declaring that compensation awarded in such cases where deceased or injured persons were travelling in a goods carriage who were owner or his authorised representative, the insurance company is liable to pay the compensation. Any compensation or part of it not paid shall be paid to the claimant by the insurance company within eight weeks of this order. Any such amount withdrawn by the claimant which was deposited by by the insurance company on furnishing security, such security stands discharged."

16. However, our attention is drawn to the later pronouncement of a larger bench of the Supreme Court in New India Insurance Company Vs. Asha Rani and others, reported in 2003 (2) SCC 223. In the said decision the larger bench of the Supreme Co laid down that Section 147 of the 1988 Act, do not provide by compulsory coverage for the death or bodily injury to any passenger or owner of goods being carried on in a goods vehicle, held thus:-

"22. ..... On the other hand proviso (ii) appended to Section 95 of the 1939 Act, enjoined a statutory liability upon the owner of the vehicle to take out an insurance policy to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment. The legislature has consciously not inserted the said provision in the 1988 Act.
23. The applicability of the decision of this Court in Mallawwa V. Oriental Insurance Co. Ltd., in this case must be considered keeping that aspect in view. Section 2 (35) of the 1988 Act does not include passengers in goods carriage whereas Section 2 (25) of the 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of "goods vehicle" in the 1939 Act and " goods carriage" in the 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature intended that a goods vehicle could not carry any passenger, as the words " in addition to passengers" occurring in the definition of goods vehicle in the 1939 Act were omitted. Furthermore, it categorically states that "goods carriage" would mean a motor vehicle constructed or adapted for use "solely for the carriage of goods". Carrying of passengers in a "goods carriage", thus, is not contemplated under the 1988 Act.
24. We have further noticed that Section 147 of the 1988 Act prescribing the requirements of an insurance policy does not contain a provision similar to clause (ii) of the proviso appended to Section 95 of the 1939 Act. The decision of this Court in Mallawwa case must be held to have been rendered having regard to the aforementioned provisions.
25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of " public service vehicle". Proviso appended thereto categorically states that compulsory

coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".
26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not

enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

17. But in this case the policy itself on the facts of the case covers non fare paying passengers and therefore even according to the policy the insurer is liable to pay Rs.10,000/= as compensation and the balance has to be paid by the owner of the vehicle. It may be that there is no requirement to make a policy, but it is not as if the deceased was an unauthorised passenger or his being allowed into the lorry is in violation of the permit conditions or he is not permitted to travel along with the consignment of vegetables he has loaded.

18. In the circumstances, we hold that the claimant is entitled to a total compensation of Rs.1,30,000/= with interest at 9% from the date of petition against the respondents, but the liability of the insurer is restricted to Rs.10,000/= with proportionate interest and cost and consequently the cross objection is allowed in part. The appeal is allowed in the above terms and cross objection is also allowed in part and there will be a decree in the above terms in MCOP. NO.21 of 1991 on the file of the Motor Accident Claims Tribunal, Nagercoil.

Internet: Yes
Index: Yes

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Copy to:-

1. District Court, Nagercoil.

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